

MENDIBOURE RANCHES, INC., ET AL.

IBLA 85-400

Decided February 27, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, dismissing protest to proposed land exchange. CA-12436.

Vacated and remanded.

1. Exchanges of Land: Generally -- Federal Land Policy and Management Act of 1976: Exchanges -- Private Exchanges: Public Interest

A BLM decision to proceed with a proposed land exchange of public land containing wetlands and situated within a floodplain pursuant to sec. 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1716 (1982), as consistent with the public interest, will be vacated and remanded where the record shows that BLM did not consider including in the deed of conveyance a requirement to preserve the beneficial values of the floodplain consistent with Executive Order No. 11988 and BLM floodplain guidelines.

APPEARANCES: Stuart L. Somach, Esq., Sacramento, California, for appellants; Hershel Shanks, Esq., Washington, D.C., and John T. Stewart, Esq., San Francisco, California, for Lyneta Ranches; Burton J. Stanley, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Sacramento, California, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Mendiboure Ranches, Inc., Pierre Mendiboure, Winnifred Mendiboure and Mary Mendiboure Jones have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated January 15, 1985, dismissing their protest to a proposed land exchange, CA-12436, involving the transfer of 8,321.97 acres of public land to Lyneta Ranches (Lyneta) in exchange for 5,242.61 acres of private land, pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1716 (1982). These lands are situated in Lassen and Modoc counties, California.

By letter dated June 1, 1982, Lyneta proposed to the District Manager, Susanville District, California, BLM, an exchange of public and private lands. In an initial feasibility report, dated July 14, 1982, the District Manager recommended to the State Director that the exchange proposal be approved. The District Manager noted that the selected lands, which consist for the most part of scattered and isolated tracts situated in an area known as the

Madeline Plains, would be made available for intensive agricultural development by Lyneta, which owns a considerable amount of land in the surrounding area. The District Manager also noted that the offered lands, which consist of tracts scattered in "fairly well-blocked areas of public lands," would provide certain "natural resource values," specifically drainages, meadowlands and springs, which could be managed for recreation, grazing and wildlife.

On January 11, 1984, the Area Manager, Alturas Resource Area, California, BLM, approved an environmental assessment (EA) of the proposed land exchange prepared by a representative of Lyneta. The EA assessed the environmental consequences of the proposed land exchange and a no action alternative. The EA at 1, stated:

The selected lands are adjacent to and intermingled with private lands of Lyneta Ranches which are currently under development for agriculture. The area is a large ancient lake bed surrounded by high mountains. The selected lands are subject to sheet flooding in the spring. In order to effectively develop the area, a drainage system must be designed and built to control this flooding and contain it in the lowest area. This would involve construction of canals and an impoundment basin of approximately 640 acres. 1/

The EA did not recognize the existence of wetlands in the selected lands, or that the selected lands are situated within a designated floodplain.

On February 23, 1984, the Area Manager approved recommendations in a land report prepared by BLM to proceed with the proposed land exchange as consistent with the "public interest." The land report stated that the transfer of the public lands to Lyneta would result in a consolidation of Lyneta's land base for purposes of alfalfa cultivation, thereby providing a "more manageable and economical agricultural operation." Land Report at 2. The report also stated that the "eventual cultivation of alfalfa in this area fits into a larger operation of transporting and processing the alfalfa into pellets at the Lyneta Mill just north of Likely (approximately 25 miles away)." Id. at 1. The report noted that the "majority of private lands in the Madeline Plains is owned by Lyneta Ranches" and that the area has not historically been amenable to small farm development. 2/ Id. at 4. BLM

1/ The topography of the selected lands is described as follows:

"The selected lands occur in a sink-like depression lacking external drainage known as the Madeline Plains. Topography is basically very flat with variation in elevation of no more than six feet over an area of eighty square miles. Runoff from precipitation and snowmelt inundate virtually the whole area with several inches of water during wet winter and normal spring periods" (EA at 2).

2/ BLM stated that the topography of the Madeline Plains is "such that large sums of money and extensive development is required to turn the barren ground into farmlands," and that Lyneta's "development plan, currently underway on the private lands, includes the construction of canals and an impoundment basin to use and contain the flooded water" (Land Report at 1).

stated that in the absence of an exchange, the public lands would be "identified for disposal by sale," because, due to the pattern of land ownership, the lands are "not conducive to effective public land management." Id. at 6.

On March 15, 1984, BLM published a notice of realty action in the Federal Register setting forth the proposed land exchange with Lyneta and providing for a 45-day public comment period. 49 FR 9781 (Mar. 15, 1984). On April 30, 1984, appellants, who are owners and operators of "substantial agricultural acreage" in the Madeline Plains, submitted objections to the proposed land exchange. Appellants objected primarily on the basis that the dikes and diked reservoirs, which it would be necessary for Lyneta to construct in order to control flooding on the selected lands, would restrict the flow of water into the southern portion of the Madeline Plains floodplain, thereby backing the water onto appellants' properties. Appellants state this would adversely affect current and future agricultural use of that land. Appellants estimate the amount of water involved "will at times exceed 20,000 acre-feet," and state that the lower portion of Madeline Plains must "remain available for flood plain purposes." Appellants requested BLM to either not complete the exchange or require Lyneta to demonstrate that "its plans to dispose of the substantial flood waters which accumulate on the property will not operate to the detriment of adjacent agricultural operations."

On April 25, 1984, Lyneta responded to concerns raised about the flooding of Madeline Plains, stating that it "plans to contain all the water that would be normally attributed to" the lands currently owned by Lyneta and those to be acquired in the exchange. Lyneta stated that it had been in contact with State agencies regarding dam specifications and reinjection of water into current and future wells, and has plans to construct a third ditch to move water "from the north to the south on the plains." Lyneta further stated that it would work with its neighbors to "minimize" the impacts of flood waters and that "[w]hen the property on the Madeline Plains is privately held, a solution to the flooding may be more easily achieved."

By letter dated August 31, 1984, Mary Mendiboure Jones personally objected to the exchange because BLM did not have enough information to determine whether it is economically feasible for Lyneta to take 14,500 acres of land, including the selected lands, "out of the center of a floodplain like the Madeline Plains and turn it into a productive alfalfa ranch," without seriously affecting other ranches on the periphery of the floodplain and the "delicate ecological balance" of the floodplain. Ms. Jones stated that there is only a "rough estimate" of the amount of water that must be handled and that, even given a conservative estimate in "above average" years of 15,000-acre feet, the proposed injection of water into wells or a 640-acre diked reservoir would not afford adequate storage capacity to contain the water which would be displaced from the floodplain. Ms. Jones also questioned whether a ditch system could handle the flow of water and noted that Lyneta's current operations have caused flooding affecting adjacent landowners. Ms. Jones also expressed concern over whether the floodplain could be rehabilitated should Lyneta's planned operations turn out to be economically infeasible.

By memorandum dated December 3, 1984, to the State Director, the District Manager offered an analysis of the comments submitted in response to

the March 1984 Federal Register notice, recommending that the land exchange be "completed as proposed" with two added patent restrictions. Relying on a Hydrologic Review (HR) prepared by a BLM district hydrologist, the District Manager evaluated the effect of the proposed land exchange on the selected lands in the Madeline Plains, which are a "designated floodplain." Memorandum dated December 3, 1984, at 10. The District Manager stated that disposal of the land would "not lead to the occupancy, modifications, or loss of the natural beneficial function of the floodplain on the selected public lands." 3/ Id. The District Manager, quoting from the HR, noted that the selected lands provide "relatively insignificant" natural "floodplain values," including reducing flood peaks and carrying overflow water, due to an already extensive development of ditches and canals and the terminal drainage position of most of the lands. Id. at 11. In addition, one of the functions normally associated with floodplains, i.e., recharge of the groundwater aquifer, is described as "virtually nonexistent" due to impervious soils. Id. The District Manager, again quoting from the HR, further stated that it is "doubtful that any agricultural development on selected lands would result in a detectable increase in the flooding of private lands not owned by the proponent," and that a "well planned extension of the existing ditch and canal system could enhance drainage to proposed holding areas." Id. These holding areas would have to be of "sufficient capacity to accommodate all water which is in any way prevented from accumulating on these selected lands." Id. The District Manager concluded:

It is definitely within the capacity of Lyneta Ranches to prevent any loss of whatever "natural" and beneficial function of the floodplain may currently exist on the selected lands. The exchange and subsequent development of the selected public lands is not likely to lead to flooding of other private lands in the vicinity.

Id. at 12.

The District Manager also noted that, in any case, Lyneta might be liable for any flood damage caused by obstructing the natural flow of water through the floodplain under the doctrine enunciated in Sanguinetti v. Pock, 136 Cal. 466 (June 2, 1902).

On December 31, 1984, BLM published an amended notice of realty action in the Federal Register, incorporating the patent restriction on the use of land in the floodplain, as well as a restriction requiring the maintenance of existing wetlands totalling 320 acres or permanent reservoirs of comparable total surface area.

In its January 1985 decision, BLM dismissed appellants' "protest" to the proposed land exchange, concluding, based on the District Manager's

3/ The District Manager proposed that the patent contain a restrictive covenant to prevent inappropriate development in the floodplain, i.e., that the land be "used only for (1) farming, ranching, or other similar agricultural developments, but not for residential buildings, or (2) for park and non-intensive open space recreation purposes." Id. at 11.

December 1984 memorandum, that the exchange is consistent with the public interest under section 206 of FLPMA, supra, and "shall therefore be consummated." BLM stated that the exchange would enable "both the Bureau and Lyneta Ranches to consolidate various scattered land holdings, and therefore improve their management on the exchanged lands and the surrounding public or private lands."

In their statement of reasons for appeal, appellants contend that BLM has not conducted an adequate evaluation of the environmental impacts of the proposed land exchange, particularly the potential for flooding of appellants' properties in the northern portion of the Madeline Plains caused by Lyneta's proposed development of the selected lands and associated diking. Appellants argue that BLM has not, as required by 40 CFR 1508.9, considered feasible alternatives to the proposed land exchange, in addition to a no action alternative, particularly patent restrictions to ensure that Lyneta undertakes appropriate "mitigation measures." Moreover, appellants contend that BLM has not fully explained how Lyneta could feasibly develop the selected lands without adverse impacts to the floodplain. Appellants argue that BLM cannot therefore conclude that adverse impacts are unlikely as a result of such development. Appellants also argue that Lyneta's construction of ditches and canals on other property it owns in the area has already "significantly altered" flooding "on the Madeline Plains" and that development of the selected lands will "aggravate a serious problem." Appellants request a hearing to consider the factual issues revolving "around the question of harm to Mendiboure Ranches." 4/ In the alternative, appellants request the Board to vacate BLM's January 1985 decision and remand the case to BLM for a more thorough environmental review and inclusion of appropriate restrictions in the patent to Lyneta, should the decision be to proceed with the exchange.

In response to appellants' statement of reasons, Lyneta contends that appellants have failed to present any evidence that Lyneta's existing or proposed operations have or will cause flooding on other private land, including appellants', and that the "only feasible alternative" which BLM was required to consider was the no action alternative. 5/

BLM has also submitted a response to appellants' statement of reasons in which it contends that the issue of whether Lyneta's operations on the

4/ Resolution of these issues is not relevant to a determination whether the proposed land exchange was properly deemed to be consistent with the public interest. We can discern no other material factual issue which necessitates the Board ordering a hearing pursuant to 43 CFR 4.415. Accordingly, we hereby deny the request for a hearing.

5/ Lyneta has also filed a request for an expedited decision on the basis that it must decide whether to exercise an option on a "significant part" of the offered lands before the end of 1985, when the option runs out, or risk jeopardizing the exchange. Lyneta states further that it is reluctant to make the decision until it knows whether the exchange will go forward. In a separate statement, BLM joins in the request and appellants have filed a statement indicating that they do not object to the request. On Dec. 20, 1985, the Board issued an order granting Lyneta's motion for expedited consideration of this case.

selected lands, once the exchange has been completed, would adversely affect adjacent private land is a matter of speculation and "not properly before the Board" in determining whether the exchange should now proceed, and that appellants would clearly have civil remedies at such future time.

[1] Section 206(a) of FLPMA, 43 U.S.C. § 1716(a) (1982), provides that the Secretary may dispose of a tract of public land "by exchange" where he "determines that the public interest will be well served by making that exchange." In considering the public interest, the Secretary is instructed to give "full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife." Id.

In determining whether the transfer of public land would serve the public interest, an obvious corollary thereto is whether an exchange would adversely affect the public interest. Thus, BLM must assess the impact of proposed or anticipated development of the public land once it passes out of Federal ownership, with consideration given to the need for appropriate restrictions. National Wildlife Federation, 82 IBLA 303 (1984). Such an assessment is critical in this case because the public lands proposed for exchange contain wetlands and are situated in a floodplain. As the District Manager recognized in his December 4, 1984, memorandum, BLM was required to consider Executive Order No. 11988, 42 FR 26951 (May 25, 1977), as amended, 44 FR 15784 (Mar. 15, 1979), 42 U.S.C. § 4321 note (1982) (relating to floodplain management), and also Executive Order No. 11990, 42 FR 26961 (May 24, 1977), 42 U.S.C. § 4321 note (1982) (relating to protection of wetlands), in making its determination to approve this exchange. Executive Order No. 11988 provides in part:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; * * *.

Sec. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain -- for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act.* * *

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

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Sec. 3.

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(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

The Departmental guidelines implementing Executive Order No. 11988, are published at 44 FR 15784 (Mar. 15, 1979). With respect to the Bureau's policy on Floodplains Management, the guidelines provide:

D. Public Lands minerals and subsurface estates within the base floodplains must be retained under BLM administration except:

1. If Federal, State, public and private institutions and parties have demonstrated the ability to maintain, restore and protect the floodplain on a continuous basis.

44 FR 15784, 15786 (Mar. 15, 1979).

Executive Order No. 11990 provides in pertinent part:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands whenever there is a practicable alternative, it is hereby ordered as follows:

Section 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial value of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; * * *.

The applicable section of the BLM Manual, § 6740.06(E)(1), authorizes the sale of wetlands. In an April 7, 1983, memorandum from the Field Solicitor, Santa Fe, to the New Mexico, State Director, BLM, regarding sale of wetlands, the Field Solicitor concludes that such sales are authorized when:

1. The tract of public wetlands is either so small or remote that it is uneconomical to manage.
2. The tract of public wetlands is not suitable for management by another Federal agency.
3. The patent contains restrictions of uses as prohibited by identified Federal, State, or local wetlands regulations.
4. The patent contains restrictions and conditions that ensure the patentee can maintain, restore, and protect the wetlands on a continuous basis.

In order to meet these requirements, the Bureau must engage in careful and extensive land use planning. If any one of these four requirements cannot be satisfied with respect to a particular wetlands tract, the tract must be retained in Federal ownership and administered by the Bureau in the manner set forth in BLM Manual Part 6740.

Memorandum at 2.

The EA, as noted above, did not consider adverse impacts on wetlands or the floodplain. These impacts were assessed in the HR. The stated purpose of that document was "to determine if development proposed by Lyneta Ranches could feasibly be conducted without unacceptable impacts to floodplain and wetland values resulting from their occupancy of the selected public lands. The summary and conclusions of the HR are quoted below:

SUMMARY AND CONCLUSIONS

Based on the information gathered in this review, it is evident that all tracts of selected lands are included as part of the Madeline floodplain as indicated on HUD floodplain maps. However, due to the extensive development of ditches and canals altering the natural drainage of the investigated area, combined with the terminal drainage position of most of the selected lands, the floodplain values of the selected lands become relatively insignificant. Functions normally associated with floodplains; such as recharge of the ground water aquifer, reducing flood peaks and sediment load, and carrying overflow water are

virtually non-existent in this setting due to impervious soils and existing drainage network which controls storm flow to the selected lands. It is doubtful that any agricultural development on selected lands would result in a detectable increase in the flooding of private lands not owned by the proponent. On the contrary, a well planned extension of the existing ditches and canal system could enhance drainage to proposed holding areas. Selected lands provide an existing flood water holding function; therefore, the holding areas will have to be of sufficient capacity to accommodate all water which is in anyway prevented from accumulating on these selected lands.

In conclusion, it is definitely within the capacity of the proponent to prevent the loss of the natural and beneficial function of the floodplain as it currently exists on selected lands. Further, it is within their capacity to prevent damage to other properties from flooding as a result of their actions on selected lands.

Wetlands on the Madeline Plains have proved to be impractical to manage as evidenced by the abandonment of the waterfowl management area (indicated on Figure 2) by the State Department of Fish and Game. BLM considered developing another area for waterfowl; however, inconsistencies in water supply resulted in the suspension of its plans. Even though the size of the wetlands which occur on the selected lands are relatively small and of limited value, the proponent is expected to protect these resources, or develop or enhance alternate sites nearby of similar or greater wetland values. A patent restriction requiring the proponent to either maintain the existing wetlands as described in this report or the permanent development of reservoirs of less than 160 acres * * * in individual size and of no less than 320 acres total surface area on the selected lands will insure that wetland values on selected lands will be maintained and protected on a continuous basis. The reservoirs must be no more than four feet deep.

As indicated here the disposal will not lead to the loss, destruction or degradation of wetlands, or lead to the occupancy, modification or loss of the natural beneficial function of the floodplain.

(HR at 7).

While the record indicates that sufficient consideration was given to the protection of wetlands and the objectives of Executive Order No. 11990, we do not find that BLM gave proper consideration to Executive Order No. 11988 and the implementing guidelines on floodplain management.

It is quite evident that BLM did not consider the potential that Lyneta's proposed development of the selected lands might have for flood water backup onto the northern portion of the Madeline Plains, including appellants' lands.

This concern was addressed by the District Manager in his December 1984 memorandum (including the attached HR), wherein he concluded, at 12, that proposed development is "not likely to lead to flooding of other private lands in the vicinity." This conclusion was apparently based in part on the determination that the existing ditch and canal system could be extended with holding areas of "sufficient capacity" to accommodate any displaced flood water. Id. at 11. In addition, the amended notice of realty action provides for a patent restriction which requires the patentee to maintain the existing wetlands totalling 320 acres or permanent reservoirs of comparable total surface area. The existing wetlands as described in the Federal Register notice are precisely those areas described in the HR, at 3-4, as the culmination of natural drainage in the floodplain.

Appellants are correct in pointing out that BLM has never explained how much flood water would be displaced by Lyneta's proposed development or specifically how Lyneta could accommodate the displaced flood water to ensure that it does not backup onto appellants' and others' private land. BLM has simply concluded that it is theoretically feasible for Lyneta to ensure that its development does not cause the flooding of other private lands.

BLM has not taken any action to require Lyneta to maintain the beneficial values of the floodplain. The fact that these values may be limited as stated in the HR does not negate the reality that some values exist. Thus to the extent that they do exist, a restriction to protect these values should be considered. We interpret BLM's conclusion that "Lyneta has the capacity to prevent flooding" to mean that it can protect the beneficial values of the floodplain. We think Executive Order No. 11988 requires BLM to take action to ensure that Lyneta will preserve the floodplain.

Clearly, the BLM guidelines expect that such assurances will be made. Whether the threat of civil action will be enough to insure that Lyneta will take every possible action to avoid flooding is irrelevant to the paramount consideration BLM is required to examine, i.e., preservation of the floodplain. It has not been demonstrated that the restrictive use covenant alone is sufficient to protect and preserve those beneficial uses. The EA, at 1, recognized:

In order to effectively develop the area, a drainage system must be designed and built to control this flooding and contain it in the lowest area. This would involve construction of canals and an impoundment basin of approximately 640 acres. The settling basin would be designed to include nesting islands to reduce predation on nesting waterfowl. Development of these islands will be done after consultation and in cooperation with the California Department of Fish and Game to determine spacing and island size. Without such a program, development of most of the area is not feasible.

The District Manager's December 4 memorandum states:

The proposed farming development by Lyneta Ranches is a preferred use in the Madeline Plains under Lassen County's land use plan for that area. The County has stated that agricultural

development is an appropriate and beneficial use of a floodplain. In accordance with Federal and State regulations the patent for the selected lands within the designated floodplains will include a restrictive covenant to prevent inappropriate development in the floodplain. The wording of the patent restriction would be as follows:

Pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977, and in Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716), this patent is subject to a restriction which constitutes a covenant running with the land, that the land lying within the Federal, State, or local government-designated 100 year floodplain may be used only for (1) farming, ranching, or other similar agricultural developments, but not for residential buildings, or (2) for park and non-intensive open space recreation purposes.

This patent restriction would apply only to those selected public lands within the HUD-designated floodplain. The legal description of those lands is given in Table 2 of the attached Hydrologic Review.

In light of the objectives of Executive Order No. 11988 and the Departmental policy, BLM is required to take specific action to preserve the natural and beneficial floodplain values served by the selected lands. While farming may be the best use of the land consistent with those objectives, the EA states that effective development of the lands requires that a drainage system be built to control flooding. Nowhere in the record does BLM discuss how such a system would affect the floodplain.

Accordingly, this matter must be remanded to BLM with directions to evaluate the effects of the proposed exchange on the floodplain consistent with this opinion and to prepare an appropriate restriction in the deed of conveyance delineating measures for floodplain preservation. 6/

Finally, appellants contend that Lyneta's proposed development will modify the hydrological structure of the selected lands thereby damaging the grasses and forbs and the wildlife dependent thereon for food and habitat. Protection of the wildlife within the selected lands is clearly a matter of public interest that should be considered by BLM in deciding whether to proceed with the proposed land exchange. The December 1984 memorandum of the District Manager, at 6-10, and the EA, at 4, indicate that BLM gave adequate consideration to the potential effect of the proposed land exchange and

6/ 43 CFR 2200.1(c) provides authority for BLM to provide for inclusion in a patent disposing of public land by exchange "any reservations, terms, covenants and conditions necessary to insure proper land use and protection of the public interest."

Lyneta's proposed development on wildlife habitat and populations, particularly antelope, sage grouse, and shore birds and other migratory birds. By providing for the maintenance of a wetlands area of at least 320 acres through a patent restriction, BLM has taken measures to protect wildlife within the selected lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case is remanded to BLM for further consideration consistent with this opinion.

Gail M. Frazier
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

C. Randall Grant, Jr.
Administrative Judge

